

1 Michael J. Gearin, WSBA # 20982
David C. Neu, WSBA # 33143
2 Brian T. Peterson, WSBA # 42088
K&L GATES LLP
925 Fourth Avenue, Suite 2900
3 Seattle, WA 98104-1158
(206) 623-7580
4
5
6
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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: November 18, 2016
Hearing Time: 9:30 a.m.
Response Date: November 10, 2016

8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 In re:
11 NORTHWEST TERRITORIAL MINT, LLC,
12
13 Debtor.

Case No. 16-11767-CMA

**MOTION TO APPROVE SETTLEMENT
WITH GRACO AWARDS AND RETT LP
PURSUANT TO FRBP 9019**

14 Mark Calvert, the Chapter 11 Trustee (the "Trustee") of Northwest Territorial Mint, LLC
15 ("NWTM" or "Debtor") files this motion seeking approval of the terms of a settlement with the
16 RETT, LP ("RETT"); Tom Tucker; Larry Cook; and G. Ra. Co. Awards Manufacturing ("Graco
17 Awards"). As described below, the terms of the settlement are in the best interests of the estate and
18 should be approved by this Court.

19 **I. FACTS**

20 1. At the time of its bankruptcy filing, NWTM billed itself as the largest private mint in
21 the United States. As of April 1, 2016 it had approximately 240 employees located at facilities in six
22 states. One aspect of the Debtor's business is the minting of coins, awards, and medallions for third
23 parties. In furtherance thereof, the Debtor owned a business commonly referred to as Graco Awards
24 Manufacturing. The primary business facility for the Debtor's Graco business was located at 723
25 South Cherry Street, Tomball, Texas 77375 (the "Premises"). The Debtor leased the Premises from
26 RETT pursuant to the Commercial Lease Agreement dated as of May 12, 2011 (the "Lease").

1 Pursuant to the terms of the Lease, RETT held a \$36,000 security deposit paid by the Debtor
2 prepetition (the "Security Deposit"). RETT is owned by Tom Tucker.

3 2. On May 6, 2016, the Trustee filed a motion for approval of the sale of its assets
4 related to the Graco business located at the Premises (the "Sale Motion") (Dkt. No. 200). The Sale
5 Motion requested that the Court approve the sale of the Graco assets to Tom Tucker and Larry Cook,
6 representing a to-be-formed entity ("Tucker/Cook"). In the Sale Motion, the Trustee requested that
7 the Court approve a break-up fee for Tucker/Cook in the amount of \$25,000 (the "Break-Up Fee").

8 3. Before the hearing on the Sale Motion, Ira Green, Inc. ("Ira Green") came forward
9 with what the Trustee concluded was a higher and better offer for the assets. On May 27, 2016, the
10 Trustee conducted an auction of the Graco assets and selected Ira Green as the prevailing bidder. On
11 June 2, 2016, the Court approved the sale of the assets to Ira Green. The asset purchase agreement
12 ("APA") the Trustee entered into with Ira Green, which was approved by the Court, required that the
13 Trustee provide Ira Green with reasonable access to the Premises until July 31, 2016 (the "Removal
14 Period"), in order to allow Ira Green to remove all of the purchased assets.

15 4. The Trustee requested, pursuant to the Trustee's Motion Pursuant to 11 U.S.C. §
16 365(d)(4) for an Extension of Time to Assume or Reject Unexpired Leases of Nonresidential Real
17 Property (Dkt. No. 449), that the Court enter an order rejecting the Lease effective as of July 31,
18 2016. The Court granted the Trustee's request pursuant to its order entered on July 20, 2016
19 (Dkt. No. 532), and in accordance with that order the Lease was rejected effective July 31, 2016.

20 5. At the hearing on the Trustee's Sale Motion, the Court continued the Trustee's
21 request for approval of the Break-Up Fee pending a submission by Tucker/Cook of evidence of
22 actual expenses incurred. Tucker/Cook established Graco Awards for the purpose of acquiring the
23 Graco assets. Tucker/Cook assigned all their rights relating to the acquisition of the Graco assets
24 including, without limitation, their rights to the Break-Up Fee to Graco Awards. After the hearing on
25 the Sale Motion, Graco Awards demanded, from the Trustee, recovery of fees and costs in excess of
26 \$25,000 and filed a Memorandum Supporting Break-Up Fee (Dkt. No. 479). In that memorandum,

1 Graco Awards requested a break-up fee in the amount of \$52,111.14, plus costs and attorney's fees
2 not to exceed \$6,000.

3 6. On June 23, 2016, RETT filed a Motion for Relief from Stay and Application for
4 Allowance and Payment of its Administrative Expense and/or Adequate Protection (Dkt. No. 439)
5 ("RETT RFS Motion"). RETT requested that the Court award it an administrative expense claim in
6 the total amount of \$31,426.77, and grant it adequate protection in the amount of \$44,000 to, in part,
7 "compensate RETT for the continuing and ongoing damage the Debtor and its invitee Ira Green . . .
8 are causing to RETT's property." The administrative expense claim sought by RETT was comprised
9 of its assertion that it owed late fees, post petition taxes, and insurance under the Lease. RETT
10 further requested that the Court allow it to terminate the Lease.

11 7. The Trustee filed written oppositions to the RETT RFS Motion and to Graco Awards'
12 request for a break-up fee in excess of \$25,000. The Trustee argued that RETT is not entitled to an
13 administrative expense claim, nor is RETT entitled to relief from stay or adequate protection. The
14 Trustee also argued that the Court should grant, to Graco Awards, a break-up fee of no more than the
15 \$25,000 Break-Up Fee that was requested in the Sale Motion.

16 8. On July 8, 2016, the Court held a hearing on the on the RETT RFS Motion and Graco
17 Awards' request for a break-up fee award. At the hearing, the Court denied RETT's request for relief
18 from the automatic stay and adequate protection. RETT's request for allowance of an administrative
19 expense claim, and other issues to be considered by the Court relative to all claims of the bankruptcy
20 estate and RETT against one another, were set over by the Court to be considered in connection with
21 an evidentiary hearing scheduled by the Court for August 30, 2016. The Court also set over, for an
22 evidentiary hearing, the issues regarding Graco Awards' request for a break-up fee.

23 9. After the rejection of the Lease, and after the July 8 hearing, RETT claimed that the
24 Trustee, on behalf of the bankruptcy estate, failed to return the Premises to RETT in the condition it
25 existed at the commencement of the Lease as required thereunder. RETT further claimed that the
26 bankruptcy estate and Ira Green are responsible for causing damage to the Premises during removal

1 of the Graco assets from the Premises, including potential environmental damage. RETT provided
2 the Trustee with pictures documenting (a) alleged damage to the Premises caused upon removal of
3 the equipment, (b) certain personal property that was left behind and that could be removed but only
4 at significant expense to RETT, and (c) damage to grass allegedly caused by the spillage of
5 potentially hazardous materials during the removal process. RETT contends the alleged damages
6 should be entitled to administrative expense priority because they were incurred post-petition and
7 pre-rejection, and in violation of the Lease's terms. The Trustee has denied the basis of, and the
8 estate's responsibility for, these claims asserted by Graco Awards.

9 10. Prior to scheduled evidentiary hearing, the parties entered into a global settlement
10 agreement resolving all the claims and issues between them (the "Settlement Agreement," and the
11 settlement detailed therein, the "Settlement"), a copy of which is attached to the accompanying
12 declaration of Mark Calvert as Exhibit A. Under the terms of the Settlement Agreement, the Trustee
13 will pay \$50,000 to RETT in satisfaction of all claims. Any and all recovery by Graco Awards is
14 limited to this \$50,000 and must be obtained by Graco Awards from RETT. In return RETT and
15 Graco Awards will release all claims against the Trustee and the bankruptcy estate.

16 II. ISSUE

17 Whether the Court should approve the terms of the Settlement Agreement.

18 III. EVIDENCE RELIED UPON

19 This Motion relies on the Declaration of Mark Calvert and the pleadings and papers on file
20 with the Court.

21 IV. ARGUMENT

22 Compromises are a "normal part of the process of reorganization." *Protective Comm. for*
23 *Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Court
24 has great latitude in approving compromise agreements and may approve a compromise if it is "fair
25 and equitable." *Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir.
26 1988). The Court does not have to decide the numerous questions of fact and law raised by

1 objecting parties. *In re Planned Protective Serv., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991).
2 The focus of the Court's inquiry is whether the settlement entered into by the Trustee was reasonable
3 given the particular circumstances of the case. *Bache & Co. v. Loeffler (In re Equity Funding Corp.*
4 *of Am.)*, 519 F.2d 1274, 1277 (9th Cir. 1975). An order approving a compromise will be upheld
5 absent abuse of discretion. *Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey*
6 *Thompson Entm't Group, Inc.)*, 292 B.R. 415, 420 (BAP 9th Cir. 2003). In considering whether to
7 approve a compromise, the Court should apprise itself of:

8
9 all facts necessary for an intelligent and objective opinion of the probabilities of
10 ultimate success should the claim be litigated. Further, the judge should form an
11 educated estimate of the complexity, expense, and likely duration of such litigation,
the possible difficulties in collecting on any judgment which might be obtained, and
all other factors relevant to a full and fair assessment of the wisdom of the proposed
compromise.

12 *TMT Trailer Ferry*, 390 U.S. at 424. Specifically, to determine whether a compromise is "fair and
13 equitable," the Court should consider: (1) the probability of success in the litigation; (2) the
14 difficulties, if any, to be encountered in collection; (3) the litigation's complexity and its attendant
15 expense, inconvenience and delay; and (4) the paramount interest of the creditors with a proper
16 deference to their reasonable view. *Martin v. Kane (In re A & C Prop.)*, 784 F.2d 1377, 1381 (9th
17 Cir. 1986).

18 The Trustee has determined, in his reasonable business discretion, that the Settlement is
19 reasonable and in the best interests of the estate. The total amount of the claims asserted by Graco
20 Awards and RETT against the bankruptcy estate exceeded \$80,000. Of this amount, the Trustee had
21 always committed to supporting a \$25,000 Break-Up Fee in favor of Graco Awards. Tucker/Cook's
22 participation in the sale process provided significant value to the estate in that it allowed the Trustee
23 to obtain a significantly higher offer from Ira Green for the Graco related assets. While the Trustee
24 believed that it had the better of the arguments on RETT's administrative expense claim arguments,
25 such issues were not without risk to the estate. The Court, by ordering an evidentiary hearing on all
26

1 of the issues between the parties, signaled that it believed the resolution of the disputes required
2 factual, as opposed to legal, determinations. Absent entering into the Settlement Agreement, the
3 Trustee would be forced to engage in discovery regarding the various issues between the parties.
4 Such discovery would result in significant expense to the bankruptcy estate. Furthermore, the cost of
5 conducting the evidentiary hearing, including argument and examination of witnesses would be
6 considerable. Additionally, the Trustee, absent entering into the Settlement, would be at risk for an
7 adverse judgment on one or more of the administrative expense claims asserted by RETT. The
8 Settlement also eliminates the estate's liability associated with potential environmental damage to
9 the Premises that occurred during the Removal Period, which RETT only asserted after the Court
10 ordered the evidentiary hearing. For all of these reasons, the Settlement Agreement is reasonable and
11 in the best interests of the estate and its creditors.

12 V. CONCLUSION

13 Based on the above, the Trustee respectfully requests that the Court approve the terms of the
14 Settlement Agreement and permit the Trustee to take all necessary actions to carry out the estate's
15 obligations under the Settlement Agreement.

16 Dated this 28th day of October, 2016.

17 K&L GATES LLP

18 By /s/ Brian T. Peterson

19 Michael J. Gearin, WSBA #20982

20 David C. Neu, WSBA #33143

21 Brian T. Peterson, WSBA #42088

22 Attorneys for Mark Calvert, Chapter 11 Trustee

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on October 28, 2016, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on October 28, 2016, she caused the foregoing document to be mailed to the Parties at the addresses listed below:

Northwest Territorial Mint LLC
c/o Ross Hansen, Member
P.O. Box 2148
Auburn, WA 98071-2148

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 28th day of October, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans